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No. 76 21

In the Supreme Court of the United States

October Term, 1945.

CHAMPLIN REFINING COMPANY, *Appellant,*

vs.

THE UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION.

Appeal from the District Court of the United States for the Western District of Oklahoma.

Motion to Transfer from Summary to Regular Docket.

HARRY O. GLASSER,
DAN MOODY,
Counsel for Champlin Refining Company.

SUPREME COURT OF THE UNITED STATES.

October Term, 1945.

No. 75

CHAMPLIN REFINING COMPANY, *Appellant,*

vs.

THE UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION.

Appeal from the District Court of the United States for the Western District of Oklahoma.

MOTION TO TRANSFER FROM SUMMARY TO REGULAR DOCKET.

The Champlin Refining Company, appellant, respectfully moves the court to transfer this cause from the summary docket to the regular docket, and in support thereof and as reasons therefor, shows:

I.

The importance of the law questions involved in this case and the implications of the authorities bearing upon such questions, together with the extended volume of the record as appears from the hereinafter stated facts, are such that the case cannot be fairly presented within the time allowed for oral argument in cases upon the summary docket.

II.

That injustice was done appellant by the rulings and order of the Interstate Commerce Commission and by the judgment of the majority of the trial court, all of which appears from the recitation of the following facts:

(a) On April 27, 1936, after the completion in 1935, of the first unit of its products pipe line, M. O. Lorenz, Director of Statistics of the Interstate Commerce Commission, advised (R., Vol. I, p. 25) appellant that its pipe line operations were not subject to the jurisdiction of the Interstate Commerce Commission. The matter so rested until 1939 (R., Vol. I, p. 26) when correspondence was renewed by the commission, which was continued (R., Vol. I, pp. 27-42, incl.) until February 7, 1941, when a divided division of the Commission (SPLAWN dissenting) determined that,

> "* * * the bureau of valuation proceed against either the Champlin Refining Company or the Standard Oil Company of Indiana in such manner as will bring before the Commission the question of jurisdiction under Section 19a for the purposes of a *test* case * * *." (R., Vol. II, p. 526)

Later, by a divided vote, (Chairman Patterson and Commissioner Porter dissenting) the Commission finally held that appellant in its products pipe line operations is a common carrier and as such, subject to the Interstate Commerce Act and the jurisdiction of the Commission (R., Vol. II, pp. 537, 546).

(b) Appellant, being aggrieved by such action, was compelled to institute this suit, and upon trial in the District Court for the western District of Oklahoma, was determined (R., Vol. I, pp. 77-93) by a divided court (District Judge VAUGHT dissenting) to be a "statutory common carrier" under the Interstate Commerce Act, and thereupon an order was entered by the majority of such specially constituted court (R., Vol. I, pp. 112-113) dismissing ap-

pellant's petition for injunction, to restrain the enforcement of the complained of orders entered by the Commission against appellant. Significantly, as hereinafter said, the majority of the trial court did not find appellant to be a common carrier in fact.

The ruling of the majority of the Commission and of the majority of the trial court that appellant is a statutory common carrier, is obviously in conflict with the construction which this Court has placed upon the pipe line clause of the Interstate Commerce Act in *The Pipe Line Cases*, 234 U. S. 548, and in *Valvoline Oil Company* v. *United States*, 308 U. S. 141. Appellant's contention that such conflict exists, finds support in the disagreement between the members of the Commission and between the members of the trial court concerning appellant's status, and is also supported by a statement made by Circuit Judge MURRAH (who concurred in the majority opinion of the trial court) when arguments were heard on the motion for rehearing, which statement is as follows (R., Vol. I, pp. 134-135):

> "I certainly want to say so far as I am concerned that as far as the interpretation or construction of the statutory language is concerned, I have no difficulty in finding that Congress intended to make the Champlin Pipe Line Company a common carrier within the meaning of this statute. I agree with you that the Supreme Court has not gone that far. There isn't any question about it as far as I am concerned. They have refused to go that far. I will put it that way. I say they have refused to do so. I don't know. I can't tell from reading those decisions whether they thought Congress could not do it or Congress did not intend to do it, but I am perfectly willing for them to clear it up, but it does worry me, the question of whether or not we are giving an unconstitutional construction to that. We are not unmindful of the force of our decision."

III.

The record shows without dispute in the testimony, that appellant's pipe line, extending from appellant's refinery at Enid, Okla., to appellant's storage tanks near Rock Rapids, Iowa, with terminals and storage tanks at Hutchison, Kan., and Superior, Neb., is used *exclusively* to transport refined products wholly manufactured by appellant in its refinery at Enid, Okla., to its storage tanks at the terminals on its pipe line; that appellant has never purchased from anyone, any products transported or to be transported through such pipe line, nor has it transported, offered to transport or been asked to transport any products belonging to any other company or person; that its pipe line does not connect with any other pipe line, but only with the storage tanks at the three terminals of the pipe line; that there is no point at which any petroleum product can be put into the line other than at the Enid refinery; that all sales of such products transported through such products pipe line are solely made from such storage tanks at such terminals; that delivery of the products at the three terminal points is made from the storage tanks at such terminals by means of truck racks or railroad tank-car racks and is not made directly from the pipe line in any instance; that no tariffs have been filed with the Interstate Commerce Commission or with any State Commission or regulatory body; that the right of eminent domain has never been exercised by appellant in connection with its pipe line; that the products while in transit through such products pipe line, and until they are sold from the storage tanks at the pipe line terminals, remain at all times in the sole ownership of appellant; that appellant has never made exchanges of products in the operation of its pipe line. (R., Vol. I, pp. 110-11, 209, 236; R., Vol. II, p. 532; 49 Val. Rep. 467.)

IV.

That to convert appellant's pipe line into a common carrier, will require conversion construction at great expense, before such line could render service to the public.

V.

To affirm the decision of the majority of the trial court will preclude the operation of a private interstate pipe line or railroad for any purpose whatsoever and would, therefore, have the effect to prohibit any person building a pipe line or railroad across state lines for the private use of the owner thereof.

Such far-reaching consequences should not be invoked against this appellant upon the summary docket of this Court.

Furthermore, at the time this case was ordered docketed on the summary docket, the Court did not make any notation of the questions upon which the Court desired argument, with the result that counsel for appellant have been compelled to prepare its brief upon all of the questions involved in the case, and are now unable to anticipate in preparation for oral argument the matters to which the argument will be limited upon a summary consideration thereof.

VI.

The ultimate questions presented by this appeal are serious and substantial and the answer to them will determine whether a refiner of crude oil products may, without invoking the exercise of the right of eminent domain, but solely by the use of privately-obtained right-of-way, construct across state lines, a private products pipe line as a plant facility for the moving of such refinery products only, out of refinery operating tanks, into storage tanks located in other states, for future sale by such refiner from such

storage tanks only, without thereby dedicating such pipe line to the use of its competitors as a common carrier for hire.

The trial court did not hold Champlin to be a common carrier in fact. It held it to be a "statutory common carrier," and as such engaged in transportation within the meaning of the Interstate Commerce Act (R., Vol. I, pp. 83-84, 112-113).

Wherefore, appellant respectfully prays that the Court grant this motion and transfer the cause to the regular docket of the Court.

HARRY O. GLASSER,
DAN MOODY,
Counsel for Champlin Refining Company.